

**POLICY AND PROCEDURES FOR
ALLEY, STREET AND RIGHT-OF-WAY
VACATIONS**

PREPARED BY

Community Development Department
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503

August 2003

SECTION I - INTRODUCTION

Authority

Chapter 354.23 of the Iowa Code allows a city to vacate part of an official plat that has been conveyed to the city or dedicated to the public which is deemed by the governing body to be of no benefit to the public. A city can vacate by resolution following a public hearing or by ordinance. A city may convey the vacated property by deed or may convey the property to adjoining property owners through the vacation instrument.

Purpose

This policy has been created to assist residents, city staff, the City Planning Commission and the City Council in reviewing requests for vacation and disposal of alleys, streets and other rights-of-way. This policy will implement the following objectives:

1. To provide due process and citizen participation in the application and review process for vacations.
2. To ensure that no property owner is deprived of required and reasonable access.
3. To reduce or eliminate hazardous and dangerous traffic conditions.
4. To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way.
5. To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.
6. To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.
7. To discourage the vacation of portions of an existing alley, street or other right-of-way.
8. To assist in the implementation of the goals and objectives of the Comprehensive Plan.
9. To reduce the City's maintenance liability on previously vacated right-of-way parcels from public improvement projects and various lots acquired through delinquent taxes or assessments.
10. To establish an equitable price for surplus public property.

SECTION II – APPLICATION PROCESS

Application

Requests for vacation of an alley, street, and other right-of-way shall be submitted to the Community Development Department, along with the required fee as set forth in the prevailing schedule of fees adopted by the City Council. All requests for vacation shall require completion of an application on a form prepared by the Community Development Department with sufficient information to review the request.

SECTION III – REVIEW PROCESS

Department and Utility Notification

Upon receipt of the completed application and all necessary attachments, the Community Development Department shall notify appropriate city departments and utilities for comment.

Guidelines

All applications for vacation will be reviewed by the Community Development Department using the following criteria:

1. Will any abutting property owners be deprived of required and reasonable access?
2. Do abutting property owners support the request?
3. If applicable, do abutting property owners agree to accept or purchase the vacated property?
4. Will any existing hazardous or dangerous traffic conditions be reduced or eliminated.
5. Will any potential liability to the City in the form of damages, injury, and/or maintenance be reduced or eliminated.
6. Will granting the request ensure adequate pedestrian and vehicular circulation?
7. Do utilities exist within the property requested for vacation? If utilities exist, are easements acceptable to ensure future maintenance and/or replacement?
8. Is the alley, street, or right-of-way being requested for vacation identified by any city improvement project or adopted plan.
9. Will approval of the request create, reduce, or eliminate a dead-end alley, street or right-of-way.
10. Is the vacation request consistent with the goals and objectives of the Comprehensive Plan?

Property Owner Notification

The Community Development Department shall notify all title holders and contract purchasers abutting the requested vacation. This notification will be in the form of a petition asking their interest in vacating and acquiring the right-of-way abutting their property. This written notification shall include a location map and legal description of the requested vacation, the time and place of the Planning Commission public hearing and request for comment. All petitions shall be maintained in the appropriate case file.

Report Preparation

Upon receipt of department and utility comments, property owner petitions and review of the above mentioned guidelines, a staff report shall be prepared by the Community Development Department. This staff report shall include general information on the request and the current utilization of the existing alley,

street, or right-of-way. Information concerning zoning and adjacent land use shall also be provided. All comments from departments, utilities, and property owners shall be incorporated into the report. This information combined with existing guidelines shall be included in the staff report. Based upon these comments, the Community Development Department will develop a recommendation for Planning Commission and City Council consideration. All staff reports will be forwarded to the applicant and Planning Commission members prior to Planning Commission public hearing.

SECTION IV – CITY PLANNING COMMISSION REVIEW

City Planning Commission Public Hearing

Upon receipt of application form and all necessary attachments, the Community Development Department shall establish file reference number and schedule the request for the next available Planning Commission meeting agenda. Legal notification of public hearing shall be made as required by Iowa Code.

Applicant and Public Participation

The most recently adopted rules of procedure shall govern the conduct of public hearings held before the Planning Commission. These procedures are hereby made part of this policy by reference.

City Planning Commission Review

Upon hearing all comments in favor and against the request, the Planning Commission shall adjourn the public hearing and take action on the case. The Planning Commission shall consider the staff report and public hearing comments and formulate a recommendation to the City Council. In making its recommendation, the Planning Commission shall determine whether the alley, street or right-of-way requested for vacation is of no benefit to the public. The Planning Commission may make additional findings of facts that are deemed appropriate in support of the recommendation.

SECTION V – CITY COUNCIL REVIEW

City Council Public Hearing

Upon completion of the Planning Commission review, the Community Development Department shall incorporate the Planning Commission recommendation into the staff report. The staff report will be forwarded to the City Council to set a public hearing in the manner set out in 354.23 and 364.7 of the Iowa Code. Upon the establishment of a date for public hearing, the City Clerk shall make legal notification in the manner prescribed by law.

City Council Review

Upon hearing all comments in favor and against the request, the City Council shall close the public hearing and render a decision on requested vacation. The City Council shall consider the staff report and recommendation, Planning Commission recommendation and findings of fact and public hearing comments. If the City Council approves the requested vacation, a finding that the alley, street or right-of-way is of no benefit to the public shall be made. The City Council shall approve the request for vacation by resolution.

SECTION VI – DISPOSITION PROCEDURES

Alleys

The application fee shall be considered the cost for the disposition of vacated alleys. The City shall convey the vacated property to abutting property owners through the vacating instrument (resolution) approved by the City Council. Upon approval, the resolution shall be recorded with the Pottawattamie County Recorder's Office. The City Council may dispose of a vacated alley by property sale when circumstances warrant it. A standard resolution format for an alley vacation is illustrated in Exhibit "A".

The resolution shall include a list of abutting property owners to whom the vacated property is being conveyed along with corresponding description of each parcel being conveyed. Chapter 354.23 of the Iowa Code allows a city to convey property by resolution, rather than a deed of conveyance. However, the resolution must conform to Section 354.23 of the Iowa Code. A recorded resolution which conforms to this section is equivalent to a deed of conveyance and the resolution shall be filed and indexed as a conveyance by the recorder and auditor.

The Community Development Department shall identify adjoining property owners, prepare corresponding legal descriptions of each parcel being conveyed and prepare a map illustrating the vacation and conveyance. Upon City Council approval, the City Clerk shall forward the resolution and corresponding map to the Pottawattamie County Recorder's Office.

Streets

Upon approval of a resolution by the City Council, the disposition of a vacated street or portions of vacated streets shall be by property sale. A standard resolution format for a street vacation is illustrated in Exhibit "B". The vacated property conveyed under this procedure shall be by a deed of conveyance. The sale price of vacated property shall be based on an established formula as set forth in the prevailing schedule of fees adopted by City Council.

As stated in Section V of this policy, City Council shall approve the vacation of an alley, street, or other right-of-way by resolution. In instances where a street or portion of a street is being vacated, the resolution shall include language vacating the property, an intent to dispose and authorized disposal. The resolution shall include a list of abutting property owners to whom the vacated property is being sold along with a corresponding description of each parcel to be conveyed. The resolution shall also include the total cost of each parcel to be sold.

The Community Development Department shall identify abutting property owners, and prepare corresponding legal descriptions of each parcel to be sold. This information shall be incorporated into the resolution.

Upon City Council approval, the Legal Department shall prepare a deed for each parcel of property to be sold. Each deed shall reference the City Council resolution number which vacated the property. Upon completion, the deed or deeds shall be forwarded to the City Clerk's Office. A copy of the deed or deeds prepared by the Legal Department shall also be forwarded to the Community Development Department. The Community Development Department shall notify all abutting property owners of the price for the property and the availability of the deed with the City Clerk's Office. The City Clerk shall hold each deed until payment is received from the individual property owner. Upon payment, the City Clerk shall record each deed with the Pottawattamie County Recorder's Office. The City Clerk shall also maintain a copy of all deeds recorded.

Other Rights-of-Way

The procedure used for the disposition of vacated alleys outlined above shall be utilized for the disposition of miscellaneous rights-of-way.

SECTION VII – DISPOSITION PROCEDURES FOR PREVIOUSLY VACATED RIGHT-OF-WAY AND OTHER SURPLUS PROPERTY

The City owns numerous parcels of property as a result of previously vacated alleys and streets, remnant parcels from public improvement projects, and various lots acquired through delinquent taxes or assessments. These properties represent a maintenance problem for the City and are often not needed for public purposes. Many of these properties are therefore surplus and can be disposed of to adjacent owners or other interested parties.

The City receives numerous inquiries from abutting owners to acquire these properties by submitting an offer to buy City property. In the past, the review process used by the City was not specific as to the review of these offers which has lead to a cumbersome and time consuming process. The following procedures are intended to clarify the review process of public property disposition. These policies are also intended to ensure that the City complies with Section 364.7 of the Iowa Code. Section 364.7 requires that the City Council adopt a resolution setting public hearing prior to the disposition of property. However, these procedures are not intended for the disposition of Park property or Urban Renewal project parcels.

Offer to Buy City Property

All offers to acquire City property shall be submitted to the City Clerk on the “Offer to Buy City Property” form as attached in Exhibit “C”. Upon receipt of this form, the City Clerk shall file the original in the applicable file and forward a copy to the Community Development Department for review.

Department Review and Mayor’s Concurrence

The Community Development Department shall circulate the Offer to Buy City Property to applicable departments for review and comment. Upon receipt of department comments, the Community Development Department will prepare a staff report for the Mayor’s concurrence and City Council review. The report will address the location of the property, a determination if the property is surplus, and the value of the property.

The report will also include a resolution of intent to dispose of City property which will establish a date for public hearing (as required by Section 364.7 of the Iowa Code) and a public notice for newspaper publication. A standard resolution of intent as attached in Exhibit “D” and notice of public hearing as attached in Exhibit “E” shall be utilized. Upon the Mayor’s concurrence and signature, the staff report, resolution, and public notice will be forwarded to the City Clerk to be scheduled for the next available City Council meeting.

City Council Notice, Public Hearing and Approval

The City Council shall adopt a resolution setting a public hearing on the offer to buy. If City Council adopts the resolution, the City Clerk shall cause the notice of public hearing to be published in the Daily Nonpareil.

Upon completion of a public hearing, City Council may approve the property disposal by resolution. The property conveyed under this procedure shall be by a deed of conveyance. The sale price of vacated property shall be based on an established formula as set forth in the prevailing schedule of fees adopted by City Council. The disposal of parcels that are determined to be buildable, shall be sold at fair market value as determined by a real estate appraisal.

With City Council approval, the Legal Department shall prepare a deed for each parcel of property to be sold. Each deed shall reference the City Council resolution number which vacated the property. Upon completion, the deed or deeds shall be forwarded to the City Clerk's Office. A copy of the deed or deeds prepared by the Legal Department shall also be forwarded to the Community Development Department. The Community Development Department shall notify all abutting property owners of the price for the property and the availability of the deed with the City Clerk's Office. The City Clerk shall hold each deed until payment is received from the individual property owner. Upon payment, the City Clerk shall record each deed with the Pottawattamie County Recorder's Office. The City Clerk shall also maintain a copy of all deeds recorded.

Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503 - Phone: 328-4616
Prepared by: Community Development Dept., Council Bluffs, IA 51503 - Phone: 328-4629

RESOLUTION NO. _____

A RESOLUTION TO VACATE AND TO DISPOSE OF ***, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, following public hearing and having given careful study to the proposal, the City Council determines that city-owned right-of-way described as follows: ***, City of Council Bluffs, Pottawattamie County, Iowa, is of no benefit to the public and should be vacated; and

WHEREAS, pursuant to Iowa Code Section 354.23, the City Council declares its intent to dispose of this City right-of-way by conveying and quitclaiming all its right, title, and interest in it to the abutting property owner(s); and

WHEREAS, this conveyance is subject to the reservation of a permanent and perpetual utilities easement of way in favor of the City of Council Bluffs, for the maintenance of any and all utilities equipment presently in place, and for such reconstruction, re-emplacment and repair thereof which said City and its licensees and/or franchise grantees may in the future deem necessary and proper, and for the removal of any improvements emplaced thereon by the grantees, or their successors or assigns, necessitated by the reconstruction, re-emplacment, or repair of such utilities, such removal to be at the sole expense of grantees or their successors or assigns and without cost to the City, its licensees and/or franchise grantees, and without obligation to repair or replace such improvements, and subject to any and all other easements and right-of-way of record and those not of record.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the above-described city right-of-way is hereby vacated and conveyed as follows: *** and all successors in interest: (Legal Description)

BE IT FURTHER RESOLVED

That the Mayor and the City Clerk be and are hereby authorized, empowered and directed to execute a City deed conveying the City's interest in the above-described alley right-of-way in consideration of the vacation application fee already paid; and

BE IT FURTHER RESOLVED

That the City Clerk is directed to deliver this resolution and attached documents to the County Recorder according to Iowa Code 354.23.

ADOPTED

AND

APPROVED: _____, 20**

Thomas P. Hanafan, Mayor

ATTEST:

Cheryl Puntenev, City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this ____ day of _____, before me the undersigned, a Notary Public in and for said County and said State, personally appeared Thomas P. Hanafan and Cheryl Puntenev, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Cheryl Puntenev, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Planning Case #SAV-0**-*****

Return to: City Clerk, 209 Pearl Street, Council Bluffs, IA 51503 - Phone: 328-4616
Prepared by: Community Development Dept., Council Bluffs, IA 51503 - Phone: 328-4629

RESOLUTION NO. _____

A RESOLUTION TO VACATE AND TO DISPOSE OF ****, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, following public hearing and having given careful study to the proposal, the City Council determines that city-owned right-of-way described as follows: **** City of Council Bluffs, Pottawattamie County, Iowa, is of no benefit to the public and should be vacated; and

WHEREAS, pursuant to Iowa Code Section 354.23, the City Council declares its intent to dispose of this City right-of-way by conveying and quitclaiming all its right, title, and interest in it to the abutting property owner(s); and

WHEREAS, this conveyance is subject to the reservation of a permanent and perpetual utilities easement of way in favor of the City of Council Bluffs, for the maintenance of any and all utilities equipment presently in place, and for such reconstruction, re-emplacement and repair thereof which said City and its licensees and/or franchise grantees may in the future deem necessary and proper, and for the removal of any improvements emplaced thereon by the grantees, or their successors or assigns, necessitated by the reconstruction, re-emplacement, or repair of such utilities, such removal to be at the sole expense of grantees or their successors or assigns and without cost to the City, its licensees and/or franchise grantees, and without obligation to repair or replace such improvements, and subject to any and all other easements and right-of-way of record and those not of record.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the above-described city right-of-way is hereby vacated and conveyed as follows:

** and all successors in interest: (Legal Description) for the sum of \$****.

BE IT FURTHER RESOLVED

That the Mayor and the City Clerk be and are hereby authorized, empowered and directed to execute a City deed conveying the City's interest in the above-described street right-of-way in consideration of the sum above; and

BE IT FURTHER RESOLVED

That the City Clerk is directed to deliver this resolution and attached documents to the County Recorder according to Iowa Code 354.23.

ADOPTED

AND

APPROVED: _____, 20**

Thomas P. Hanafan, Mayor

ATTEST:

Cheryl Puntene, City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this ____ day of _____, before me the undersigned, a Notary Public in and for said County and said State, personally appeared Thomas P. Hanafan and Cheryl Puntene, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Cheryl Puntene, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Planning Case #SAV-0**-*****

OFFER TO BUY CITY PROPERTY

Council Bluffs, Pottawattamie County, Iowa, _____, 20____

TO: THE CITY OF COUNCIL BLUFFS, IOWA:

THE UNDERSIGNED (hereby designated as Buyers) hereby offer to buy the real estate situated in Council Bluffs, Pottawattamie County, Iowa, described as follows:

together with any easements and servient estates appurtenant thereto, but with reservations and exceptions only as follows:

- (a) Title shall be taken subject to applicable zoning restrictions, except as in (1) below:
- (b) And subject to easements of record for public utilities, public roads and public highways; at _____per square foot, for a total sum of \$_____, payable at the office of the City Clerk, City Hall, 209 Pearl Street, Council Bluffs, Iowa 51503, as follows:

by payment of \$_____ (down payment is required in the amount of \$25.00 or 10% of the total purchase price, whichever is greater) herewith to be held by the City Clerk of Council Bluffs, Iowa, pending passage of an ordinance authorizing vacation and disposal of the described property and authorizing the Mayor and City Clerk of Council Bluffs, Iowa, to execute the City Deed to the described property; and the balance of \$_____ to be paid upon execution and delivery of the City Deed by the Mayor and City Clerk of Council Bluffs, Iowa.

(1) SPECIAL USE. This offer is void unless Buyers are permitted, under any existing zoning and building restrictions, immediately to make the following conforming use of said real estate:

_____.

(2) TAXES. All subsequent taxes shall be paid by Buyers.

(3) SPECIAL ASSESSMENTS. All subsequent special assessments shall be paid by Buyers.

(4) INSURANCE. Buyers, if they desire, may obtain insurance to cover risk of loss from hazards.

(5) POSSESSION. Buyers are entitled to possession of the described property upon payment of the balance due and receipt of the City Deed.

(6) REJECTED OFFER. If this offer is rejected by the City Council of the City of Council Bluffs, Pottawattamie County, Iowa, it shall become null and void and all payments shall be repaid to the Buyers.

(7) DEED. Upon payment of the purchase price, the City shall convey title by City Deed, free and clear of liens and encumbrances, reservations, exceptions or modifications except as in this instrument otherwise expressly provided. All warranties shall extend to time of acceptance of this offer and delivery of deed.

(8) OTHER PROVISIONS: _____

Buyer

Buyer's Spouse

Title

Address

Telephone

STATE OF IOWA)
COUNTY OF) ss
POTTAWATTAMIE)

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me known to be the identical person(s) named in and who executed the within and foregoing instrument "Offer To Buy City Property" in its entirety and acknowledged that they executed the same as their voluntary act and deed.

Notary Public in and for said State

RESOLUTION NO. _____

A RESOLUTION of intent to dispose of excess city property.

WHEREAS, _____ has submitted an offer to buy excess City property located at _____; and

WHEREAS, after study and consideration, this City Council hereby declares its intent to dispose of said excess City property.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That this City Council hereby declares its intent to dispose of excess city property located at _____.

ADOPTED
AND _____, 2003
APPROVED

THOMAS P. HANAFAN Mayor

Attest: _____
CHERYL PUNTENEY City Clerk

NOTICE OF PUBLIC HEARING
ON INTENT TO DISPOSE OF EXCESS CITY PROPERTY

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council for the City of Council Bluffs, Iowa, has scheduled a public hearing on a proposed resolution of intent to dispose of excess city property located at

_____.

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting to be held at 7:00 p.m. on the ____ day of _____, 2003, in the City Council Chambers in the City Hall building, 209 Pearl Street, Council Bluffs, Iowa, at which time and place all persons interested in said matter will be given an opportunity to be heard.

CHERYL PUNTENEY

City Clerk